

Introduced by Senator Soto

February 18, 2005

~~An act relating to dispute resolution programs. An act to amend Sections 7028 and 7125.4 of the Business and Professions Code, relating to contractors.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 488, as amended, Soto. ~~Department of Consumer Affairs: dispute resolution programs-Contractors.~~

Existing law, the Contractors' State License Law, creates the Contractors' State License Board within the Department of Consumer Affairs and provides for the licensure and regulation of contractors. Existing law makes it a misdemeanor for any person to engage in the business or act in the capacity of a contractor without having a license. Existing law requires, with exceptions, that a repeat offender be confined in a county jail for not less than 90 days. Existing law requires a court to state on the record its reasons if the court imposes a jail sentence of less than 90 days or only a fine.

This bill would make 3rd and subsequent convictions of these offenses punishable by a fine not exceeding \$10,000 or by imprisonment or by both that fine and imprisonment.

Existing law generally requires an applicant for a contractors' license or a licensee to have on file with the board a Certificate of Workers' Compensation Insurance or a Certification of Self-Insurance. Existing law provides that failure to comply with these provisions constitutes cause for disciplinary action.

This bill would also make any qualifier for a license guilty of a misdemeanor for committing or failing to prevent the commission of any of these acts that are cause for disciplinary action.

Because failure to comply with the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law establishes a Dispute Resolution Advisory Council in the Division of Consumer Services in the Department of Consumer Affairs.~~

~~This bill would state the intent of the Legislature to enact laws relating to dispute resolution programs.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. It is the intent of the Legislature to enact laws~~
2 ~~relating to the provisions in Chapter 8 (commencing with Section~~
3 ~~465) of Division 1 of the Business and Professions Code~~
4 ~~pertaining to dispute resolution programs.~~

5 ~~SECTION 1. Section 7028 of the Business and Professions~~
6 ~~Code is amended to read:~~

7 7028. (a) It is a misdemeanor for any person to engage in the
8 business or act in the capacity of a contractor within this state
9 without having a license therefor, unless the person is
10 particularly exempted from the provisions of this chapter.

11 (b) If a person has been previously convicted of the offense
12 described in this section, the court shall impose a fine of 20
13 percent of the price of the contract under which the unlicensed
14 person performed contracting work, or four thousand five
15 hundred dollars (\$4,500), whichever is greater, and, *unless the*
16 *sentence prescribed in subdivision (c) is imposed,* the person
17 shall be confined in a county jail for not less than 90 days, except
18 in an unusual case where the interests of justice would be served
19 by imposition of a lesser sentence or a fine. If the court imposes
20 only a fine or a jail sentence of less than 90 days for second or
21 subsequent convictions under this section, the court shall state
22 the reasons for its sentencing choice on the record.

(c) *The third and subsequent convictions for the offense described in this section is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in a county jail for not more than one year, or by both that fine and imprisonment. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.*~~It~~

(d) *In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, “the price of the contract” for the purposes of this section means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.*

~~(d)~~

(e) *Notwithstanding any other provision of law to the contrary, an indictment for any violation of this section by the unlicensed contractor shall be found or an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.*

SEC. 2 Section 7125.4 of the Business and Professions Code is amended to read:

7125.4. (a) *The filing of statement or exemption certificate prescribed by this article that is false, or the employment of a person subject to coverage under the workers’ compensation laws after the filing of an exemption certificate without first filing a Certificate of Workers’ Compensation Insurance or Certification of Self-Insurance in accordance with the provisions of this article, or the employment of a person subject to coverage under the workers’ compensation laws without maintaining coverage for that person, constitutes cause for disciplinary action.*

(b) *Any qualifier for a license who, under Section 7068.1 is responsible for assuring that a licensee complies with the provisions of this chapter, is also guilty of a misdemeanor for committing or failing to prevent the commission of any of the acts that are cause for disciplinary action under this section.*

SEC. 3 No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section

- 1 *17556 of the Government Code, or changes the definition of a*
- 2 *crime within the meaning of Section 6 of Article XIII B of the*
- 3 *California Constitution.*

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